



JPDA and BAYU-UNDAN TAX INFORMATION For Timor-Leste Permanent Establishments

SCOPE

The tax information set out below is a summary of ConocoPhillips' interpretation of the application of taxes to work/activities related to the Bayu-Undan project in the Joint Petroleum Development Area ("JPDA"). This is not specific tax advice and contractors should not rely on this information but obtain their own independent tax advice having regard to their specific facts and circumstances.

This information is current as at December 2016 and may be subject to future revision. Your attention is drawn to the disclaimer and statement of confidentiality appearing at the end of this document.

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1.0 Background

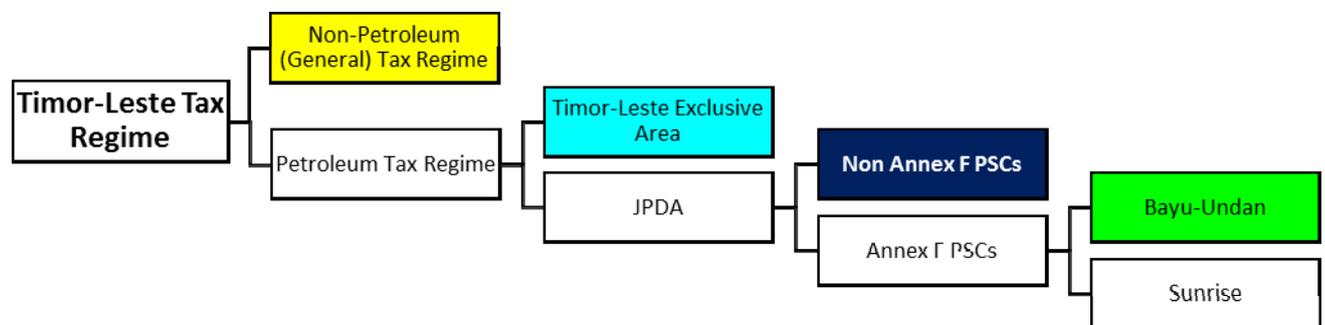
1.1 The Treaty

East Timor (now referred to as Timor-Leste) was declared a new independent nation on 20 May 2002 after voting to cede from Indonesia on 25th October 1999. Both Timor-Leste and Australia continue to claim sovereignty over the area of the Timor Sea that includes the Bayu-Undan gas and condensate field. The Timor Sea Treaty (“TST”), agreed in order to address these competing claims, was ratified by Timor-Leste and Australia and came into full legal effect on 2 April 2003. A primary purpose of the TST is to prevent double taxation of income earned from activities related to the JPDA in the Timor Sea. This is achieved via a general revenue sharing arrangement between Timor-Leste and Australia which splits taxation revenues/rights related to oil and gas extraction activities in the JPDA 90:10 in favour of Timor-Leste. This means that such business activities in the JPDA will generally be subject to and need to deal with both Australian and Timor-Leste taxation obligations.

1.2 Timor-Leste Tax Law

Timor-Leste adopted Indonesian tax law as its’ general tax law pursuant to UNTAET Regulation No.1999/1 with effect from 25 October 1999 (hereafter referred to as the *Law on Income Tax*). The general domestic tax law of Timor-Leste has been amended from time to time and is now contained primarily in UNTAET Regulation 2000/18 (as amended) and the Taxes and Duties Act (2008). We note that during 2016 Timor-Leste commenced a substantial tax reform project and is in the process of developing revised tax laws, including a general VAT law which may be finalised, approved by Parliament and promulgated in due course. Changes to Timor-Leste taxes should not significantly affect activities related to the Bayu-Undan project which is protected by a tax stability agreement.

Timor-Leste’s current set of tax laws presently encompass 5 different tax regimes, with are illustrated below:



- The Non-Petroleum (General) Tax Regime will be relevant for some local content activities involving transactions with local businesses on mainland Timor.
- The Timor-Leste Exclusive Area (TLEA) is outside of the JPDA. Activities taking place in this area are subject to Timor’s general petroleum tax regime.
- Non-Annex F JPDA PCSs are located inside the JPDA and so are subject to the Timor Sea Treaty as well as the general petroleum tax regime. The application of the general petroleum tax regime to TLEA and JPDA Non-Annex F PSCs is outside the scope of this document.
- Annex F PSCs include the Bayu-Undan and Sunrise gas fields and are not subject to the general petroleum tax regime. The Bayu-Undan project is instead subject to the Timor Sea Treaty, the Taxation of Bayu-Undan Contractors Act (TBUCA) and the *Law on Income Tax*. A

Tax Stability Agreement made between the Bayu-Undan Contractors and the government of Timor-Leste ensures that the taxes applicable to Bayu-Undan will remain unchanged for the life of the PSC. The tax treatment of activities connected with the Sunrise PSC is outside the scope of this document.

The following table outlines applicable WHT and VAT rates and laws for each regime / area:

Income Source	Withholding Tax		Value Added Tax (VAT)	Applicable Laws ¹
	Non-Resident / Non-PE	Resident / PE		
Timor-Leste Non-Petroleum (General)	10%	Various ²	N/A	Taxes and Duties Act
Timor-Leste Exclusive Area (TLEA) Petroleum	6%	6%	N/A	Taxes and Duties Act
Non-Annex F, JPDA Petroleum	6% (5.4% JPDA)	6% (5.4% JPDA)	10% (9% JPDA)	Timor Sea Treaty, Taxes and Duties Act
Bayu-Undan Project	8% (7.2% JPDA)	Various ³	10% (9% JPDA)	Timor Sea Treaty, TBUCA, <i>Law on Income Tax</i> (Indonesia, 1999)

Notes:

1. Other relevant laws include: UNTAET regulation no. 1999/1 and 2000/18
2. Withholding tax rates applicable to Timor-Leste Non-Petroleum (General) Activities range between 2% - 10%. These rates do not apply to Bayu-Undan direct contractors, but may apply to services provided under a ConocoPhillips Timor-Leste Pty Ltd contract and to services acquired on Timor mainland from local businesses.
3. Refer to table at 2.3 below.

1.3 Timor-Leste Tax Administration

The National Directorate of Domestic Revenue (NDDR) is responsible for the day-to-day administration of the general tax system in Timor-Leste. The overall tax office itself is generally referred to as the Timor-Leste Revenue Service (hereinafter the TLRS, and was previously referred to as the ETRS). The National Directorate of Petroleum and Mineral Revenues (NDPMR) is the TLRS department responsible for administering all Petroleum and Mineral taxes payable in the area covered by the JPDA and TLEA.

2.0 Application of Income Taxes to JPDA-related Activities

2.1 Relevance of the Permanent Establishment (“PE”) concept

The PE concept is a common feature of international tax regimes used to distinguish non-resident business activities for taxation purposes:

- a. PE activities are those with a fixed or permanent place of business or substantial presence which are generally taxed in a similar manner to residents / domestic businesses and incur comprehensive tax administration obligations;
- b. Non-PE activities are those lacking sufficient presence or permanence which are often taxed on a final withholding basis and incur a lower level of tax administration obligations.

The Timor Sea Treaty Tax Code does not directly address the PE determination for JPDA activities as this determination is addressed individually under the applicable Timor-Leste and Australian tax laws respectively.

Where a contractor has a PE in the JPDA for Australian and/or Timor-Leste tax purposes the following obligations must be considered:

- registration for income tax purposes, lodgment of annual income tax returns, payment of income taxes and branch profits tax (if applicable)

- withholding of taxes from sub-contractors where applicable
- employee tax withholding requirements.

Article 2(5) of the *Law on Income Tax* must be applied to determine the existence of a PE for Timor-Leste tax purposes related to Bayu-Undan activities. A PE will arise if the contractor is present (via physical presence of sub-contractor personnel or employees) in the JPDA for more than 60 days in aggregate in any 12-month period or owns a construction, installation or drilling site in the JPDA.

Non-residents of Australia will be able to rely on applicable Australian double tax treaties (“DTAs”) in determining whether a PE exists for Australian tax purposes.

The existence of a PE should be determined for each legal entity and not by reference to work performed under each specific contract individually, i.e. the total activities of the legal entity should be considered.

2.2 Taxation of Business Profits in the JPDA

Article 5 of the TST Tax Code provides for the taxation of business profits “derived from the JPDA” and applies to most business activities in the JPDA. Article 5 contains a “source” rule for determining whether business profits are derived from the JPDA and hence taxable pursuant to Article 5. Business profits attributable to a PE in the JPDA will be “derived from” the JPDA. Depending on the facts this may include income earned from activities performed outside the JPDA which directly support and relate to PE operations within the JPDA.

Double taxation of business profits is relieved in relation to JPDA activities by reducing the amount subject to tax to 90% (Timor-Leste) or 10% (Australia) of the business profits from 20 May 2002 and 50% prior to this date. The imposition of Timor-Leste WHT should not result in double taxation of Australian residents. Timor-Leste taxes are withheld or paid in lieu of Australian taxes that would otherwise be payable on the full 100% of business profits (for Australian residents).

2.3 Timor-Leste Withholding Taxes (“WHTs”) for Bayu-Undan Services

The following table sets out Timor-Leste WHTs that ConocoPhillips considers most likely to be applicable to Bayu-Undan JPDA related activities (this is not an exhaustive listing). The tax rates under the *Law on Income Tax* are revised for Bayu-Undan pursuant to TBUCA law. The effective tax rate is shown in the “Reduction 90%” column after application of the TST reduction percentage for Timor-Leste.

Description of Service/ Recipient of Payments	General Law Ref ¹	Bayu (TBUCA) Rate		Final Tax? ²
		Tax Rate	Reduction 90%	
Non-resident WHT (No PE)	26	8.0%	7.2%	Yes
Resident/PE WHTs:				
- Drilling Services (rig) ³	15, 25	1.8%	1.62%	Yes
- Drillings support services ⁴	23	1.8%	1.62%	No
- Construction Services ⁵	4	0.8%	0.72%	Yes
- Consulting Services ⁶	4	1.6%	1.44%	Yes
- Other Services ⁷	23	2.4%	2.16%	No
- Royalties (payable by CoP) to Aust. Resident	23	6.0%	5.4% ⁸	No
- Shipping and Air Charter Service ⁹	15, 25, 26	0.72%	0.648%	Yes
- Labour hire/Manpower; Catering; Repairs and Maintenance services ¹⁰	23	0.0%	0.0%	No

Notes:

1. Law references are to Articles of the *Law on Income Tax*.
2. Is the WHT a "final tax"? If "Yes" – there is no further Timor-Leste income tax payable on lodgment of the annual tax return. (Note that BPT does not apply to Bayu-Undan project). If "No" – actual final income taxes are calculated in the annual income tax return with a credit given for WHT deducted.
3. Only applies to drilling services performed by a drilling rig with a PE according to Indonesian ruling SE-21/PJ.31./1991. The WHT liability and payment are the responsibility of the contractor in this case (self-withholding)
4. See Indonesian tax regulation KEP 128/PJ./1997 – includes services supporting drilling activities such as mud engineering, well logging and testing etc.
5. Includes integral planning, supply, implementation and supervisory services resulting in a structure (e.g. infield pipelines and Bayu facilities) – see Indonesian MOF Decree No.704/KMK.04/1996.
6. Where not covered as "construction services" above, includes separate engineering, design, site supervision, project management etc as well as general advice/consulting except for legal and tax consulting – see Indonesian MOF Decree No.704/KMK.04/1996.
7. Covers certain services including rental of assets, technical, management, accounting, legal and tax services according to Indonesian regulation KEP 128/PJ./1997.
8. Royalty WHT applies subject to article 10 of the TST Tax Code (article 7 of the TGT Tax Code). The 10% reduction only applies where the recipient is a non-resident of both Australia and Timor-Leste. Royalty WHT is limited to 10% pursuant to article 10 of the TST Tax Code (article 7 of the TGT Tax Code) where the payee is a resident of either Australia or Timor-Leste.
9. Shipping and air charter services are subject to WHT according to special rules per MOF Decree 417/KMK.04/1996. The same rule applies to VAT. This rule is also stated in the TST Tax Code article 6 – note additional comments below.
10. Manpower or labor hire services are exempt from both WHT and VAT – see Indonesian tax documents S-441/PJ.8/2000; KEP 128/PJ./1997, and Article 9 Government Regulation 50/1994. Catering, repairs and maintenance are also types of services not subjected to WHT by the article 23 (KEP) regulation.

These WHTs must be applied pursuant to the Tax Code where the relevant income is taxable by reason of its' connection with the JPDA. Contractor WHTs will generally be applied pursuant to articles 5, 10 or 14 of the TST Tax Code. Interest WHT is subject to article 9 of the TST Tax Code.

Activities not related to Bayu-Undan or other Annex F contracts are subject to WHT rates as prescribed in the Taxes and Duties Act (see 1.2 above). The application of this law is not addressed in this document.

2.4 Australian WHT

Australian WHT will generally only apply to payments to foreign contractors where the contractor has a potential Australian tax liability. Australian WHTs applicable to foreign contractors working in the JPDA or Australia include:

- "No ABN" WHT of 46.5% will apply where a contractor is carrying on business in Australia or has a PE in Australia and fails to register and obtain an Australian Business Number from the Australian Taxation Office ("ATO").
- Payments to foreign resident for "works" – 5% WHT. This applies to payments to foreign residents for construction and related activities. A variation can be obtained from the ATO where the tax liability is nil or less than 5%.

These WHTs presently apply without the Treaty reduction to 10% where the activities are performed in the JPDA.

2.5 Timor-Leste Local Content

Local content plans can involve Bayu-Undan contractors performing services on the Timor-Leste mainland. Where services are performed on the Timor-Leste mainland under a Bayu-Undan contract the TBUCA withholding tax rates listed in the above table at 2.3 are applicable at 100%, as the 90% reduction only applies within the JPDA. Sub-contracted services with local businesses are generally subject to the non-petroleum (general) tax regime as discussed at 1.2 above.

2.6 Shipping and Air Charter Services

The TST addresses shipping and air transport in Article 6 of the Tax Code and provides for taxation treatment that is basically the same as Timor-Leste WHT and VAT rules. The rate of Timor-Leste (“TL”) WHT applicable will depend on whether the service provider has a PE in the JPDA/TL. The Timor-Leste taxation of income derived from shipping and air transport services is summarised below.

Trip Commences	Trip Ends	Description – Portion of Income Subject to TL Tax	TL VAT	TL WHT
JPDA	JPDA	JPDA profits – 90% TL	Yes	Yes
JPDA	TL	JPDA profits – 90% TL	Yes	Yes
JPDA	Aust/Other	JPDA profits – 90% TL	Yes	Yes
TL	JPDA	TL profits – 100% TL	No	Yes
TL	TL/Other	TL profits – 100% TL	No	Yes
Aust/Other	JPDA	No TL taxation	No	No
Aust/Other	TL	No TL taxation	No	No

2.7 Reimbursable Expenses

Timor-Leste WHT will generally be calculated by reference to the total compensation payable to the contractor, including reimbursable costs (but excluding any VAT or GST). However, where ConocoPhillips has requested the contractor bear certain incidental out-of-pocket expenses on its’ behalf, such as airfares and accommodation, these costs will be reimbursed without deduction of Timor-Leste WHT. For this concession to apply, in addition to usual invoicing requirements, the reimbursable costs must be separately identified on the invoice (or preferably invoiced separately) with copies of the relevant third party invoices attached as support.

There are also specific concessions in the regulations; for example, there is a special rule for offshore drilling companies (ref. Indonesian circular letter SE21/PJ31/1991).

2.8 Royalty WHT

Australia or Timor-Leste may impose royalty WHT on royalties paid to non-residents/PEs with a tax credit being allowed against the payee’s home country tax liability. Article 10 of the TST Tax Code applies to royalties “paid by” a (PSC) Contractor (such as ConocoPhillips) and allocates taxing rights to the country of the payee’s residence.

The definition of “royalty” for JPDA tax purposes includes the rights to use tangible and intangible assets, technology and knowledge. Charges for equipment used by contractors in performing services for ConocoPhillips would generally not qualify as royalties (e.g. “wet-leases”) – see also Australian income tax ruling IT 2660.

If royalty income is paid to an Australian resident, the Timor-Leste WHT will be a credit against the company’s Australian income tax liabilities. Due to tax creditability, royalty WHT will not generally result in additional cost to a contractor. Accordingly, ConocoPhillips expects that contractors will not seek to “recover” royalty WHT by grossing up their rates/fees. The creditability of royalty WHT to non-residents of Australia will depend on the applicable tax laws.

Timor-Leste royalty WHT rates are included in the table at 2.3 above.

2.9 Taxation of Employees

a. Timor-Leste Wages Tax

Where individuals perform services in the JPDA or Timor-Leste a Timor-Leste wages tax liability may arise. If the employer has a PE in the JPDA/Timor-Leste the employer will be required to withhold Timor-Leste WHT from salary and wages paid to the employee.

If the employer providing the employee's services in the JPDA does not have a PE, the employer would ordinarily not be registered with the TLRS for taxation purposes and is not obliged to deduct tax from payments to the employee. (However, in this case the principal would be required to deduct non-resident WHT from the payments to the employer).

Timor-Leste wages tax generally applies to the gross value of employment-related remuneration including superannuation, and other non-cash benefits.

Schedules of Timor-Leste wages tax rates most likely to apply to sub-contractors in relation to the provision of services to the Bayu-Undan project:

i. Bayu-Undan Project

Non-residents of Timor-Leste:	General Tax Rate	JPDA Effective Tax Rate
UNTAET Regulation 2000/18 Schedule 1, Section 6 Part A (a)(iii)	20%	18%

Note the above tax rate is derived from Article 26 of the Law on Income Tax and Sub-section 8.4 of TBUCA. The Timor Sea Treaty reduction percentage to 90% is applied to calculate the JPDA effective tax rate.

Residents of Timor-Leste:	Income (USD)	Tax Rate
UNTAET Regulation 2000/18 Schedule 1, Section 6 Part A (b). Note that tax free allowances also apply as set out below.	[*] – 3,368	10%
	3,369 – 6,737	15%
	6,738 +	30%

Note that the above tax rates are derived from Article 17 (USD conversion from Rp) of the Law on Income Tax with the withholding obligation on the employer pursuant to Article 21.

Tax Free Allowance for Residents of Timor-Leste:	No. Dependents	*Tax Free Allowance (USD)
Derived from Article 7 of the <i>Law on Income Tax</i> in USD. Note that dependents include a spouse and / or children.	0	388
	1	582
	2	776
	3	970
	4	1,164

ii. Mainland / general services (generally non Bayu-Undan)

Residents of Timor-Leste:	Income (USD)	Tax Rate
Sections 20 – 23 and Schedule V of the Taxes and Duties Act 2008.	0 – 6,000	0%
	6,001 +	10%

Note that the above tax rates may be applicable to certain employees providing services indirectly for the Bayu Undan project.

Note that the Taxes and Duties Act 2008 also contains specific oil and gas project provisions in Chapter IX however these provisions do not apply to the Bayu-Undan project and are not addressed in this document.

b. Australian PAYG Wages Tax

Timor-Leste resident employees working in the JPDA are subject to Australian tax on 10% of their earnings from services performed in the JPDA. Timor-Leste tax applies to 100% of their earnings but they are entitled to claim a credit for Australian tax.

Australian resident employees are subject to Australian tax on 100% of their earnings from services performed in the JPDA but are entitled to claim a credit for Timor-Leste withholding tax. The Australian Taxation Office has issued a PAYG table for salaries paid to employees for services in the JPDA that explains how this works. Note the application of Class Ruling CR 2010/51 which provides clarification regarding the entitlement to an offset for Timor-Leste tax paid.

Residents of countries other than Australia and Timor-Leste are subject to Timor-Leste tax on 90% of their earnings and Australian tax on 10% of their earnings.

Australia's double tax agreements may also affect the application of Australian tax to employees working in the JPDA.

3.0 Timor-Leste Value Added Tax ("VAT")

The adoption of Indonesian tax laws as at 25 October 1999 included the Law on Value Added Tax and the Law on Luxury Goods Tax. VAT is applied in the JPDA in accordance with Indonesian Circular Letter SE- 27/PJ.52/1998 which limits VAT to services performed within the JPDA¹.

Timor-Leste VAT applies only to services provided / performed within the JPDA. VAT does not apply on mainland Timor-Leste or to the sale of goods (including consumables). The VAT rate is 10% resulting in a 9% effective rate pursuant to Article 18 of the TST Tax Code. The tax status of the contractor is not relevant to the application of VAT (i.e. whether the contractor is registered with a PE or is treated as a non-resident).

VAT is collected by ConocoPhillips as an Operator in the JPDA and then paid directly to the TLRS. Although contractors do not collect VAT from ConocoPhillips or pay VAT they must calculate and show applicable VAT on all invoices to ConocoPhillips to enable collection and payment of VAT. These special VAT collection and payment arrangements were established by the ETRS in their ruling of 12 December 2001 (refer to section 4.2). This also means that sub-contractors do not need to register for VAT or charge VAT on invoices to contractors / sub-contractors.

Services must be (physically) performed/present in the JPDA to be subject to VAT. Therefore, any charge for services, for example rental on equipment etc., performed/rendered outside the JPDA (such as travel time charges) is not subject to VAT. Manpower/labour-hire services and "hotel" type services are also specifically exempt from Timor-Leste VAT.

Apportionment of charges for VAT purposes is therefore necessary where part of the charge is for services outside the JPDA. The ETRS ruling of 12 December 2001 states at section 4.1:

"Therefore where apportionment is required, it is to be done using the same principle as for foreign shipping and air transport withholding decision (417/KMK.04/1996), with the day of export counted as a day spent wholly in the Zone and the day of import spent wholly outside

¹ See also sections 71.1 and 91 of the Taxes and Duties Act, 2008.

the Zone. Helicopters services are also to be apportioned on this basis with flights out VATable.”

In the example of hire equipment shipped into the JPDA a reasonable estimate will be required to facilitate an apportionment of hire charges incurred when equipment is outside the JPDA. This portion of the charges would not be subject to VAT. Where personnel or equipment are transported direct by helicopter into the JPDA, the cost attributable to the flight into the JPDA should be treated as VAT-free (outside the JPDA) and the cost attributable to the flight out of the JPDA as VATable.

If the service provided is subject to VAT, then the amount of VAT imposed on such services will generally be added to the value of the invoice.

3.1 Shipping and Air Charter Services

The application of VAT to shipping and air charter services is the same as that for Timor-Leste WHT and is set out at 2.6 above.

4.0 Calculation of Timor-Leste WHT and VAT

Where a contractor does not have a PE the WHT is calculated on the same value as VAT. Timor-Leste WHT generally applies to the gross amount of compensation/charges, excluding VAT. Similarly, VAT applies to the gross charges payable under the contract, including any amount on account of Timor-Leste WHT.

However, in the case of a PE WHT may apply to a greater portion of the charges than VAT due to the source or attribution rules generally applicable to PEs as well as the business profits source rules set out in Article 5 of the TST Tax Code.

Timor-Leste WHT and VAT should never be applied to Australian GST. VAT and GST are mutually exclusive taxes.

5.0 Australian GST

Australian Goods and Services Tax (GST) applies to most supplies connected with Australia that are made by an enterprise registered (or required to be registered) for GST.

The following supplies are specifically GST-free:

- a. export of goods;
- b. lease or hire of goods used outside Australia; and
- c. things other than goods or property that are directly connected with goods or real property situated outside Australia.

The JPDA is not presently treated as part of Australia for GST purposes, so supplies of services connected with the JPDA are GST-free. Where the entire supply or service is exclusively for use in the JPDA, then the GST-free conditions are met for the entire supply, even if some charges relate to items such as transportation time within Australia. The ATO has specifically addressed this issue in ATO ID 2007/169.

In situations where part of a supply is made/performed outside the JPDA and part inside the JPDA it will be necessary to apportion the supply as part GST applicable and part GST-free.

At no time should there be overlap between Australian GST and Timor-Leste VAT.

6.0 Timor-Leste Tax Contacts and Links

Contact details, copies of rulings, regulations, directives, forms and guides relating to specific taxes are available on the TLRS Website at <https://www.mof.gov.tl/taxation/petroleum-tax/?lang=en>

7.0 Disclaimer

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